



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,835	10/23/2003	Martine Fennelly	FLEECE.001A	9218

7590 02/27/2007
GAZDZINSKI & ASSOCIATES
Suite 375
11440 West Bernardo Court
San Diego, CA 92127

EXAMINER
NGUYEN, SON T

ART UNIT	PAPER NUMBER
3643	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/692,835

Applicant(s)

FENNELLY, MARTINE

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 70-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 70-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 73-75,89,90,94,95** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claims 73-75, the phrase "said plurality of pads" lacks prior antecedent basis". Note that a plurality of pads can be two or three or four etc. but only two are called for in claim 70, to which claims 73-75 depend on.

For claims 74 & 94, the phrase "a first layer and a second layer of material" is unclear because it uncertain if Applicant is claiming a first layer and then a second layer of material or a first layer of material and a second layer of material. The language should be changed to either "first and second layers of material" or "a first layer of material and a second layer of material" to clarify the claim language.

For claims 89 & 90, the phrases "optional pad element" and "optional contour element" render the claim indefinitely because does the apparatus have the pad element and contour element or does it not? Applicant must positively recite the claimed subject matter and not leave one to wonder if it does or does not. This language is similar to "such as", "or the like", "preferably", all of which are unclear recitation under MPEP 2173.05 (d).

For claim 95, this claim depends on claim 61 which was canceled, therefore, it is unclear where it would depend from.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 70-75,78,79,91-93** are rejected under 35 U.S.C. 102(b) as being anticipated by Vasko et al.(US 4683709).

For claim 70, Vasko et al. teach a saddle pad apparatus 12 adapted to support a saddle while maintaining substantially unimpeded movement of the spinal column of a living subject, comprising a first pad 36 disposed laterally to one side of the spine and a second pad 38 disposed laterally to the other side of the spine so that said first and second plurality of pads straddle said spinal column and are sufficiently distant therefrom so as not to impede movement of the spinal column of said living subject by forming a space between said spinal column and said saddle pad apparatus, each of said pads being adapted to individually cooperate with one or more gaps or recesses of the anatomy of the living subject; wherein at least a portion of said one or more gaps or recesses are disposed in the withers region of the subject. Note the adapted language, which the pads of Vasko et al. are adapted to perform the intended function.

For claim 71, Vasko et al. further teach a third and a fourth pad so that said apparatus comprises four discrete pads, two per side of the spine. See col. 5, lines 5-8.

For claim 72, Vasko et al. further teach wherein at least one of said pads varies in thickness (see figs. 5-8).

For claim 73, Vasko et al. further teach wherein at least a portion of said plurality of pads are formed from a visco-elastic foam material (col. 2, lines 65-68 and col. 3, lines 32-48).

For claim 74, Vasko et al. further teach wherein said plurality of pads are disposed in pockets 28,30 formed substantially between a first layer 14 and a second layer 17 of material.

For claim 75, Vasko et al. further teach wherein said plurality of pads are made removable from said pockets via Velcro strips 34,35 disposed at seams of said pockets.

For claims 78 & 79, Vasko et al. further teach wherein said apparatus is further adapted to mitigate rocking of said saddle back and forth on said living subject during riding due to thickness variation as shown in figs. 5-8 and the straps 40-43 to tight the pad around the saddle or horse.

For claim 91, Vasko et al. teach a pad element 36,38 comprising a plurality of rounded edges (for example, fig. 2 where ref. 41 is pointing at) adapted for use in a saddle pad, wherein said pad element is formed from a visco-elastic foam (col. 2, lines 65-68 and col. 3, lines 32-48) and is adapted for selective removal from said saddle pad by a user; and wherein said pad element is particularly shaped to substantially accommodate a particular withers region artifact on the anatomy of an animal on which said pad element and saddle pad is utilized.

For claim 92, Vasko et al. further teach wherein said pad element has a plurality of densities (inherently taught because the pad has some sort of density when compressed or uncompressed) associated therewith in its uncompressed state.

For claim 93, Vasko et al. further teach wherein said plurality of densities are substantially stratified with respect to the width dimension of said element. See figs. 5-7 of stratification of the pad element.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 76,77,80-90,94-97** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasko et al. as applied to claims 70,74 above, and further in view of Woods (5802823).

For claim 76, Vasko et al. teach the layers 14,15,17,18 made out of wool felt or woven nylon fabric, which are fiber based material (col. 2, lines 48-59) but Vasko et al. are silent about material (the bottom layer) 17,18 being sheepskin disposed to contact the skin of said living subject.

Woods teaches a saddle pad having a material 62 being sheepskin disposed to contact the skin of said living subject. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the material 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be

within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

For claim 77, Vasko et al. as modified by Woods further teaches the living subject is an equine.

For claim 80, Vasko et al. teach saddle pad apparatus 12 adapted to support a saddle on a living subject comprising a plurality of pads 36,38 that distribute load from said saddle substantially evenly on said living subject to avoid contact with the living subject's spinal column over only a plurality of non- contiguous regions of said living subject's anatomy such that during riding said saddle is substantially stable around a rotational axis transverse to the longitudinal axis of the spinal column of said subject; wherein said plurality of pads are disposed laterally to said spine in pockets 28,30 formed substantially between a first layer 17,18 and a second layer 14,15 of material; and wherein said first layer and second layer comprise wool felt or woven nylon fabric, which are a fiber-based material, said material layer 17,18 being disposed to contact the skin of said living subject, said fiber- based material layer 14,15 being disposed to contact said saddle. However, Vasko et al. are silent about the first layer 17,18 being made out of sheepskin and said sheepskin being disposed to contact the skin of said living subject .

As mentioned above, Woods teaches sheepskin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the material 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been

held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

For claim 81, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein said plurality comprises four discrete pads, two per side of the spine, each of said four pads being adapted to cooperate with a recess or gap within the anatomy of the subject. See col.5, lines 5-10.

For claim 82, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein at least one of said pads varies in thickness. See figs. 5-8.

For claim 83, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein at least a portion of said plurality of pads are formed from a visco-elastic foam material. See col. 2, line 67,col. 3, lines 32-48.

For claim 84, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein said plurality of pads are made removable from said pockets via Velcro strips 34,35 disposed at seams of said pockets.

For claim 85, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein said living subject comprises an equine.

For claim 86, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein said apparatus is further adapted to support said saddle while maintaining substantially unimpeded movement of the spinal column of said living subject.

For claim 87, Vasko et al. teach a saddle pad adapted for use with a saddle on an equine, comprising: first and second substantially flexible elements 14,15,17,18 having roughly the same shape, said first and second elements being bound together in at least a plurality of locations along their periphery, said first element comprising a wool felt or woven nylon fabric and being in direct contact with the skin of said equine; and a plurality of compressible visco-elastic foam pad elements 36,38 disposed between said first and second flexibly elements, said pad elements straddling the spine of said equine at a distance whereby said saddle pad is not in contact with the spinal column of said equine during riding, wherein substantial weight redistribution of said saddle in a front-back direction is frustrated by said pad elements; and wherein said unimpeded spine movement, said frustration of redistribution, and said first flexible element cooperate to provide reduced discomfort for said equine during said riding. However, Vasko et al. are silent about said first element comprising a thick sheepskin.

As mentioned above, Woods teaches sheepskin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the material 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

For claim 88, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach at least one peripheral ridge 19 disposed substantially along a front or back periphery of said first and second elements, said peripheral ridge cooperating with

an edge of said saddle to substantially frustrate relative motion between said saddle pad and said saddle in at least one direction during riding.

For claim 89, Vasko et al. teach a saddle pad adapted for use, with a saddle, on an equine, comprising: first and second substantially flexible elements 28,30 having roughly the same shape, said first and second elements being bound together (by binding 19 and seam 20) in at least a plurality of locations along their periphery, said first element comprising wool felt or woven nylon fabric in direct contact with the skin of said equine and said second element comprising a fiber-based material (such as wool felt or woven nylon fabric) disposed to contact said saddle; a plurality of compressible visco-elastic foam pad elements 36,38 disposed between said first and second flexible elements, a first portion of said plurality of pad elements having a first shape and an optional second portion of said plurality of said pad elements having a second shape (see figs. 5-8), said pad elements adapted to straddle the spine of said equine with at least a portion of said plurality disposed within said saddle pad and sufficiently distant from said spine such that the movement of the spine of said equine is substantially unimpeded by said saddle and said pad elements during riding, first and second restraining straps 40-43 affixed to at least said second flexible element, said straps each being adapted for substantially concealed tethering to said saddle; and at least one peripheral ridge 19 disposed substantially along a front or back periphery of said first and second elements, said peripheral ridge cooperating with an edge of said saddle to substantially frustrate relative motion between said saddle pad and said saddle in at least one direction during riding; wherein said pad elements having said first shape are

adapted to interface with gaps formed in the withers region of said animal, whereas said optional pad elements 36,38 (see also col. 5, lines 5-10) having said second shape are adapted to interface with gaps formed in the region of the animal directly under a rear portion of said saddle. However, Vasko et al. are silent about the first element comprising sheepskin in direct contact with the skin of said equine.

As mentioned above, Woods teaches sheepskin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first element 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

For claim 90, Vasko et al. teach tilt-inhibiting saddle pad apparatus, comprising: a body element having a plurality of pockets 28,30 formed therein, said plurality of pockets formed substantially between a first layer 17,18 and a second layer 14,15 of material, said first layer comprising wool felt or woven nylon fabric disposed to contact the skin of an animal and said second layer comprising wool felt or woven nylon fabric, which is a fiber-based material, being disposed to contact a saddle; a plurality of visco-elastic foam pad elements 36,38 disposed within respective ones of said pockets; and an optional contour element (an additional pad, see col. 5, lines 5-10) adapted to be disposed within a respective one of said pockets, said optional contour element having physical properties that when used in cooperation with said pad elements and the anatomy of said animal on which said pad apparatus and a saddle are disposed,

maintain said saddle in a substantially constant orientation with respect to said animal.

Note that since it is "optional" to have the contour element, technically, one can do without it, thus, Vasko et al. meet the claimed limitation without the contour element.

However, Vasko et al. are silent about said first layer comprising sheepskin disposed to contact the skin of an animal.

As mentioned above, Woods teaches sheepskin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first layer 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

For claim 94, Vasko et al. teach an apparatus adapted for use on high-withered animals, comprising: a substantially flexible pad 12 comprising a plurality of pockets 28,30 formed substantially between a first layer 17,18 and a second layer 14,15 of material and adapted to capture respective ones of pad elements; wherein said first layer and second layer comprise wool felt or woven nylon fabric, which are a fiber-based material, respectively, said wool felt or woven nylon fabric being disposed to contact the skin of said high-withered animals, said wool felt or woven nylon fabric, which are fiber-based material, being disposed to contact a saddle; a plurality of visco-elastic foam pad elements 36,38 captured by respective ones of said pockets; wherein said pad elements and said pad cooperatively form a raised feature element to raise a frontal portion of a saddle disposed over top of said pad elements with respect to a

withers region in order to mitigate tilting or rocking of the saddle. However, Vasko et al. are silent about wherein said first layer comprises sheepskin.

As mentioned above, Woods teaches sheepskin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first layer 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

For claim 95, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach a pad interface 19 (or the thickness of layer 17,18) adapted to interface between said pad and said animal, said pad interface adapted to (i) dissipate localized pressure; (ii) dissipate heat; and (iii) dissipate moisture. Note that claim 95 depends upon a cancel claim 61, thus, this claim is open to different interpretation as to what a pad interface is.

For claim 96, Vasko et al. teach a coordinated riding system for use on an animal, comprising: a pad retaining structure 12 comprising a plurality of pockets 28,30 formed substantially between a first layer 17,18 and a second layer 14,15 of material and adapted to capture respective ones of pad elements, said first layer and second layer comprise wool felt or woven nylon fabric, which are fiber-based material, respectively, said wool felt or woven nylon fabric, which are fiber-based material, being disposed to contact the skin of said high-withered animals, said wool felt or woven nylon fabric, which are fiber-based material, being disposed to contact a saddle; a plurality of

Art Unit: 3643

visco-elastic foam pad elements 36,38 that straddle the spinal column and are sufficiently distant from a spinal column of said animal so as to not impede movement thereof during animal ambulation, said plurality of pad elements being retained by said structure and adapted to provide a substantially uniform distribution of pressure and withers support; and an interface element 19 (or the thickness of the layer 17) disposed between said animal and said pad elements, said interface element being adapted to provide substantial pressure dissipation, moisture dissipation, and thermal dissipation. However, Vasko et al. are silent about said first layer comprises sheepskin.

As mentioned above, Woods teaches sheepskin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first layer 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

For claim 97, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein said retaining structure comprises a saddle pad 12, and said pad elements comprise four visco-elastic foam pads 36,38, two of said pads being disposed at or near the withers region of said animal and configured to cooperate with gaps present in the anatomy of said animal at said withers region to provide said withers support.

Response to Arguments

7. Applicant's arguments filed 12/4/06 have been fully considered but they are not persuasive.

Applicant argued that Applicant submits that newly added Claim 70 also distinguishes over the prior art, including Vasko, as Claim 70 includes limitations directed to a first pad and a second pad that straddle the spinal column of the living subject and are sufficiently distant therefrom so that the saddle pad apparatus does not impede movement of the spinal column of the living subject by forming a space between the spinal column and the saddle pad apparatus. Vasko clearly emphasizes the immediate proximity of the pads to the spinal column of the horse's back and thus, in Applicant's view, Vasko clearly does not contemplate or suggest, inter alia, forming a space between the saddle pad apparatus and the spinal column of a living subject as claimed by Applicant.

Vasko et al. teach the limitation as claimed because both the first and second pads 36,38 straddle the spinal column of the horse from the sides of the horse. In addition, the pads are not touching each other due to their separation in each pockets by seam 26 (col. 2, lines 60-62, clearly states that the pad are separated by a centerline stitching 26). This separation definitely produces a gap between the pads and this separation, obviously, does not impede movement of the spinal column when the pads are placed on each side of the horse's body. Furthermore, what is considered "sufficient distance"? Would that also depends on the horse's body length, width, etc.?

Immediate proximity does not necessary means touching or back to back. Again, it goes back to what is considered immediate proximity, 1 inch, 2 inches, etc.?

Applicant argued that **Applicant submits that Claim 94 distinguishes over the prior art as none of the prior art, including Vasko, teaches or suggests, inter alia, "said pad elements and said pad cooperatively form a raised feature element to raise a frontal portion of a saddle disposed over top of said pad element with respect to a withers region in order to mitigate tilting or rocking of the saddle."** Applicant notes that on page 8 of the Office Action, a similar limitation was argued by the Examiner with regards to previously presented Claim 60. Specifically, the Examiner appears to point to element 12 as teaching such. Applicant traverses this assertion, and notes that element 12 of Vasko generally refers to the saddle pad apparatus of Vasko, and not to any particular discussed feature.

In the office action, the Examiner specifically states "in the area of ref. 12" and not ref. 12 as the raised feature element. Every element in the office action is given a reference numeral, unless otherwise noted in parenthesis, which in this case, there was no reference numeral for the purposed raised feature element in Vasko et al. so the closest to it is where ref. 12 is pointing at in fig. 1. In this figure, the pad elements and pad cooperatively form a raised feature element when placed on the horse. It is inherently taught that when a saddle is placed thereon, the pad elements and the pad forming this so called raised feature element having a thickness, of course raises the frontal portion or any portion of the saddle with respect to the withers region (where

"frontal" is located) in order to mitigate tilting or rocking of the saddle. Note that "to mitigate tilting or rocking of the saddle" is functional language, which is satisfied by the structure of the elements of Vasko et al.'s invention. note that Vasko et al. do not have to spell out every intention or functional use of the saddle pad but as long as the structure making up the saddle pad can perform that function.

Applicant argued that the Commercial Success Declaration of Martine Fennelly should overcome claims 70,73-74,76-78,80,83-87,89,90,94,96.

For claims 70-75,78,79,91-93, the declaration cannot overcome a 102 rejection as mentioned in the previous office action, see MPEP section 706.02(b) in regards to what can overcome a 102(b) rejection.

For the rest of the claims, the declaration has been acknowledged but it is not found persuasive. The Examiner believes that the Declaration does not provide sufficient evidence as required for Commercial Success (MPEP Section 716.03 (a)-(b)). First, the dollar values and sale growths given by Martine Fennelly (page 10, number 10) are not evidence for commercial success because these values could reflect heavy promotion or advertising, shift in advertising, consumption by purchasers normally tied to assignee or applicant, or other business events. Second, the inventor's or assignee's opinion as to the purchaser's reason for buying the product is insufficient to demonstrate a nexus between the sales and the claimed invention. Third, conclusory statements or opinions of increased sales (page 10, number 10) were due to the merits of the claimed invention are entitled to little weight. Finally, the emails provided as exhibits regarding satisfaction from the buyers of the product appear to be an opinion of

what they like and not evidence of commercial success, or the fact that they might be loyal costumers and are happy with the product but does not necessary means the product is better than another similar product.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

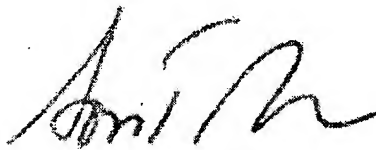
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

Art Unit: 3643

applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Son T. Nguyen', with a stylized flourish at the end.

Son T Nguyen
Primary Examiner
AU 3643